

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68032; File No. SR-ISE-2012-83)

October 10, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Route Out Fees for Priority Customers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 1, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE is proposing to adopt a fee related to the execution of Priority Customer orders subject to linkage handling. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt a fee related to the execution of Priority Customer³ orders subject to linkage handling ("Linkage Fee") in symbols that are not currently subject to a Linkage Fee.

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan ("Distributive Linkage") and the use of Intermarket Sweep Orders ("ISOs"). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange's Primary Market Makers ("PMMs") have an obligation to address customer⁴ orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge "taker" fees. To minimize the PMM's financial burden and help offset such fees, the ISE adopted a rebate for the PMM of \$0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO

³ Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account.

⁴ Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

order sent away was executed).⁵ The rebate for PMMs for Priority Customer orders in the Select Symbols is equal to the fee charged by the away exchange.⁶

With the costs associated with servicing Priority Customer orders that must be executed at another exchange coupled with the cost of funding the existing fee credit, the Exchange recently adopted a Linkage Fee for executions that result from the PMM routing ISOs to another exchange in a limited number of symbols.⁷ The Linkage Fee is currently \$0.35 per contract⁸ and is only charged for Priority Customer orders that are routed to an away exchange in symbols that are subject to the Exchange's modified maker/taker pricing model. These symbols, which currently number 93, are identified on the Exchange's Schedule of Fees as Select Symbols. Priority Customer orders that are routed out to another exchange are charged the Linkage Fee at the current rate instead of the standard taker fee applicable to the Select Symbols. The purpose of this proposed rule change is to extend the current Linkage Fee to Priority Customer orders that are routed to an away exchange in all symbols traded on the Exchange.

The Linkage Fee allows the Exchange to equitably assess reasonable fees incurred for processing such orders, and permits the Exchange to recoup administrative and other costs. However, because the fees assessed by other exchanges vary considerably, the Exchange has determined to simply rebate to PMMs the actual transaction fee assessed by the exchange to

⁵ See Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 52521 (October 13, 2009) (SR-ISE-2009-74).

⁶ See Securities and Exchange Act Release No. 66746 (April 5, 2012), 77 FR 21833 (April 11, 2012) (SR-ISE-2012-28).

⁷ See Securities and Exchange Act Release No. 66589 (March 14, 2012), 77 FR 16311 (March 20, 2012) (SR-ISE-2012-13).

⁸ See Securities and Exchange Act Release No. 66746 (April 5, 2012), 77 FR 21833 (April 11, 2012) (SR-ISE-2012-28).

which the order is routed, while requiring the PMM to make every effort, all things being equal, to route the order to the lowest cost away market.⁹

The Exchange notes that it currently has a similar fee and credit for Professional Customer orders. Specifically, the Exchange currently charges Professional Customers a fee of \$0.45 per contract for executions of orders that are routed to one or more exchanges in connection with Distributive Linkage, and also provides PMMs with a credit equal to the fee charged by the destination exchange for such Professional Customer orders, but not more than \$0.45 per contract.¹⁰ This routing fee and credit applies to all the symbols that are traded on the Exchange.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4)¹¹ of the Exchange Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes charging a route-out fee for Priority Customer orders is reasonable if doing so provides the Exchange the ability to recover the costs of funding a credit the Exchange provides to its PMMs, who, in the course of meeting their obligation, are incurring a financial burden. The Exchange further believes it is equitable and reasonable to assess the proposed fee to recoup costs associated with routing Priority Customer orders to away markets. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees would be uniformly applied to

⁹ See ISE Schedule of Fees, Section E. PMM Linkage Credit.

¹⁰ See Securities and Exchange Act Release No. 61855 (April 6, 2010), 75 FR 19441 (April 14, 2010) (SR-ISE-2010-26).

¹¹ 15 U.S.C. 78f(b)(4).

all Priority Customer orders. ISE notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange further notes that the fees proposed herein are substantially lower than the level of fees charged by some of the Exchange's competitors.¹²

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³ At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹² See NASDAQ OMX PHLX Fee Schedule, Section V.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2012-83 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2012-83. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of ISE. All comments received will be posted without change;

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2012-83, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).